SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
DEC 27 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 75-1044

STANLEY THOMS,

Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE APPELLATE COURT OF
ILLINOIS, FIRST DISTRICT

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Petitioner, Stanley Thoms, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court to The State of Illinois denying leave to appeal from the Illinois Appellate Court's First District, affirmance of petitioner's conviction. Judgment was entered September 25, 1975.

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Opinions Below

The opinion of the Illinois Appellate Court is reported at 30 Ill.App.3d 229, 332 N.E. 558.

The Illinois Supreme Court issued no opinion in denying leave to appeal. It's notification of judgment is dated September 25, 1975.

Jurisdiction.

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3). The judgment of the Supreme Court of Illinois was entered on September 25, 1975.

Question Presented

Where the Statute of Limitations has run out on three of the six indictments for which petitioner stood trial and was convicted, was it a denial of Due Process under the Fourteenth Amendment for the trial judge to deny petitioner's pre-trial motion to dismiss

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indictments, and his post-conviction motion in arrest of judgment and for a new trial?

Constitutional Provision Involved

The due process clause of the Fourteenth Amendment to the Constitution of the United States:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

State Statutes Involved

The Illinois statute of limitations (extended limitations) provides in relevant part as follows:

> "A prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced within one year after discovery of the offense by a person having a legal duty to report such offense, or in the absence of such discovery, within one year after the proper prosecuting officer becomes aware of the offense. However, in no such case is the period of limitation so extended more than 3 years beyond the expiration of

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the period otherwise applicable." Ill.Rev.Stat. 1971, Ch. 38, §§3-6(b).

The "Series of Acts" section provides as follows:

> "When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed." Ill.Rev.Stat. 1971, Ch. 38, §§3-8.

Statement of the Case

This petition to review the Illinois Supreme Court's denial of leave to appeal raises a question particularly relevant to the "Watergate Era" of witch-hunting for official misconduct: Is it not a fundamental violation of due process for a trial court judge to allow an ambitious prosecutor to proceed to trial on indictments that allege offenses that occurred many years before, and are void under state law?

Stanley Thoms was the Police Chief

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for the Village of Alsip for 21 years from 1950 to 1971. He was found guilty after a bench trial under six indictments charging bribery and official misconduct. He was placed on probation for two years on the condition he serve periodic imprisonment for the first year.

Three of the indictments were based on the Grand Jury testimony of Clarence Basten, a motel operator in the Village of Alsip. They charge a continuing course of conduct beginning in April, 1966, and continuing through January, 1969. The indictments were returned over three years later on February 4, 1972.*

The Illinois Statute of Limitations in effect at the time the indictments were returned stated, "A prosecution for any

*The other three indictments were based on the testimony before the Grand Jury of a second motel operator, and allege a course of conduct from 1963 through October, 1970.

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offense based upon misconduct in office by a police officer or employee may be commenced within one year after discovery of the offense by a person having a legal duty to report such offense, or in the absence of such discovery, within one year after the proper prosecuting officer becomes aware of the offense. However, in no such case is the period of limitations so extended more than three years beyond the expiration of the period otherwise applicable." Ill. Rev. Stat., Ch. 38, §§3-5(b).

Further, the Statute reads, "When an offense is based on a series of acts performed at different times, the period of limitations prescribed by this article states at the time when the last such act is committed." §§3-8.

Upon petitioner's conviction, his trial counsel made a motion in arrest of

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judgment and for a new trial alleging among other grounds that the indictments were barred by the Statute of Limitations. The motion was denied by the trial judge.

Another attorney was retained to handle the appeal before the Illinois Appellate Court. In his brief he argued sufficiency of the evidence, and did not argue the Statute of Limitations issue. The Appellate Court affirmed the conviction.

Petitioner retained new counsel again and petitioned the Illinois Supreme Court for leave to appeal the Appellate Court's decision, this time arguing "that the Appellate Court erred in affirming the trial court's judgments of convictions entered upon void indictments, a jurisdictional defect in arrest of judgment."

The Illinois Supreme Court denied the petition on September 25, 1975.

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Petitioner now comes before the Honorable Supreme Court of the United States and prays for a writ of certiorari.

Reasons For Granting The Writ

Petitioner was a suburban police chief for twenty-one years who was indicted by an ambitious prosecutor, himself under indictment at the time, in the election year of 1972. The incentives for over-reaching become readily apparent.

Three of the six indictments defendant stood trial for (based on the testimony of Clarence Basten) were outside the statute of limitations.

The Illinois Supreme Court has stated repeatedly over the years that "It is a fundamental rule of criminal pleading that an indictment which on its face shows that the offense charged is barred by the Statute of Limitations is wholly insufficient at law. People v. Rhodes, 308 Ill.

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146, 139 N.E. 53 (1923); People v. Hallberg, 250 Ill. 502, 102 N.E. 1005 (1911); People v. Johnson, 34 Ill.2d 202, 215 N.E. 2d 204 (1966).

Where an indictment clearly shows that acts allegedly committed occurred on dates not within the general limitation period, and there is no averment of facts avoiding the bar to prosecution, the indictment is defective and properly subject to a motion to dismiss. Ill. Rev. Stat. 1971, Ch. 110A, par. 604(a); People v. Munoz, 23 Ill.App.3d 306, 319 N.E.2d 98.

In Munoz, the Court observed:

> "Absent any averment as to (avoiding the bar to the Statute of Limitations), it is impossible for the defendant to ascertain whether the statute has been validly invoked. To withstand constitutional attack, an indictment must appraise the defendant of the crime charged with sufficient certainty and definitiveness so that he may...'intelligently prepare his defense and plead the

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judgment in bar of a subsequent prosecution for the same offense.' People v. Johnson, 34 Ill.2d 202, 215 N.E.2d 204 (1966)." People v. Munoz, ibid., p. 309.

No such averment of facts appeared on the face of the three indictments in question.

As recently as Smith v. Goguen, 415 U.S. 566, 94 S.Ct. 1242 (1974), this Court reaffirmed the doctrine that a statute must set forth with sufficient clarity the particular conduct that is proscribed. Language that would leave a reasonable man guessing as to the statute's applicability to a certain course of conduct is objectionable under the Fourteenth Amendment's Due Process clause. In the case of indictments that do not charge a defendant with sufficient clarity, thereby denying him the opportunity to prepare a defense, or to plea the judgment in bar to a subsequent prosecution, this doctrine was

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articulated as early as U.S. v. Cruikshank, 92 U.S. 542 (1875).

Petitioner, Stanley Thoms, complied with Illinois Criminal Procedure when he filed his pre-trial motion to dismiss the indictment. The trial court's refusal to grant same placed him in a position where he had to stand trial and assume jeopardy. Had he been acquitted, the prosecution might arguably have proceeded again on valid indictments, thereby placing defendant in double jeopardy.

Petitioner does not deny that an indictment that fails to aver facts that would bar the Statute of Limitations' applicability is normally within the province of habeas corpus remedies since the Court would have no jurisdiction over petitioner. Nevertheless it can be seen that the repeated placement of petitioner in jeopardy of subsequent prosecutions by an

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aggressive prosecutor goes to the very heart of what fundamental due procees seeks to protect.

This is particularly true in the realm of what may be termed "political prosecutions" of public office-holders. Burglars, robbers, and sex offenders have never been worth the publicity to a prosecutor that another office-holder is. The mere issuance of the indictments by the grand jury, and the standing trial after the trial court should have dismissed them, forces office-holders into positions of being viewed as criminal defendants to their great disrepute.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment

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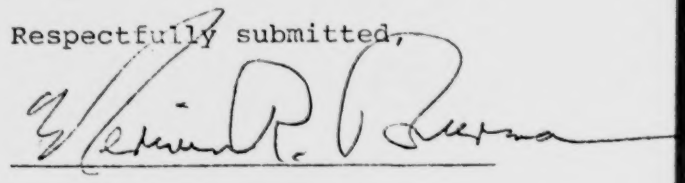
of the Appellate Court of Illinois,

First District.

Respectfully submitted,



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47767

State of Illinois
Office Of
CLERK OF THE SUPREME COURT
Springfield
62706
September 25, 1975

Clell L. Woods
Clerk

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No. 47767 - People State of Illinois, respondent, vs. Stanley Thomas, petitioner. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Clell L. Woods

Clerk of the Supreme Court

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THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STANLEY THOMS, Defendant-Appellant.

(No. 59995; Judgment affirmed.)

First District (5th Division)—June 13, 1975.

BRIBERY (§ 3)—*evidence sustained convictions for bribery and official misconduct.*

Where State's witnesses established that defendant knowingly solicited and accepted funds which were unauthorized by law from motel owners, using his office as chief of police with intent to influence the performance of an act in his official capacity, defendant's guilt on charges of bribery and official misconduct was established beyond reasonable doubt (Ill. Rev. Stat. 1969, ch. 38, pars. 33—1(d), (e), 33—3(d)).

APPEAL from the Circuit Court of Cook County; the Hon. E. HAROLD WINELAND, Judge, presiding.

Brunswick, Jemilo & Richardson, of Blue Island, and Tully & Roddy, of Chicago (Richard S. Jemilo and Joseph V. Roddy, of counsel), for appellant.

Bernard Carey, State's Attorney, of Chicago (Patrick T. Driscoll, Jr., and Thomas D. Rafter, Assistant State's Attorneys, of counsel), for the People.

Mr. PRESIDING JUSTICE BARRETT delivered the opinion of the court:

Stanley Thoms, defendant, was found guilty after a bench trial of the crimes of bribery and official misconduct (Ill. Rev. Stat. 1969, ch. 38, pars. 33—1(d), (e), and 33—3(d)). He was placed on probation for a period of 2 years with the condition that he serve periodic imprisonment during the first year of his probation. Defendant appeals, arguing that the evidence was insufficient to establish his guilt beyond a reasonable doubt.

At trial, Louis B. Gemeinhardt testified that he and his partner, Edward Feeley, owned the Hollywood Motel located in Alsip, Illinois. Gemeinhardt testified that approximately 2 weeks after purchasing the motel, in February 1963, he received a message to contact the defendant. Subsequently, he met the defendant at defendant's home. At that time defendant informed him that running a motel was a very hazardous business since they had to deal with drunks, undesirables and women. Defendant offered to use his influence to take care of the property and see they did not run into any kind of problems. Defendant informed him

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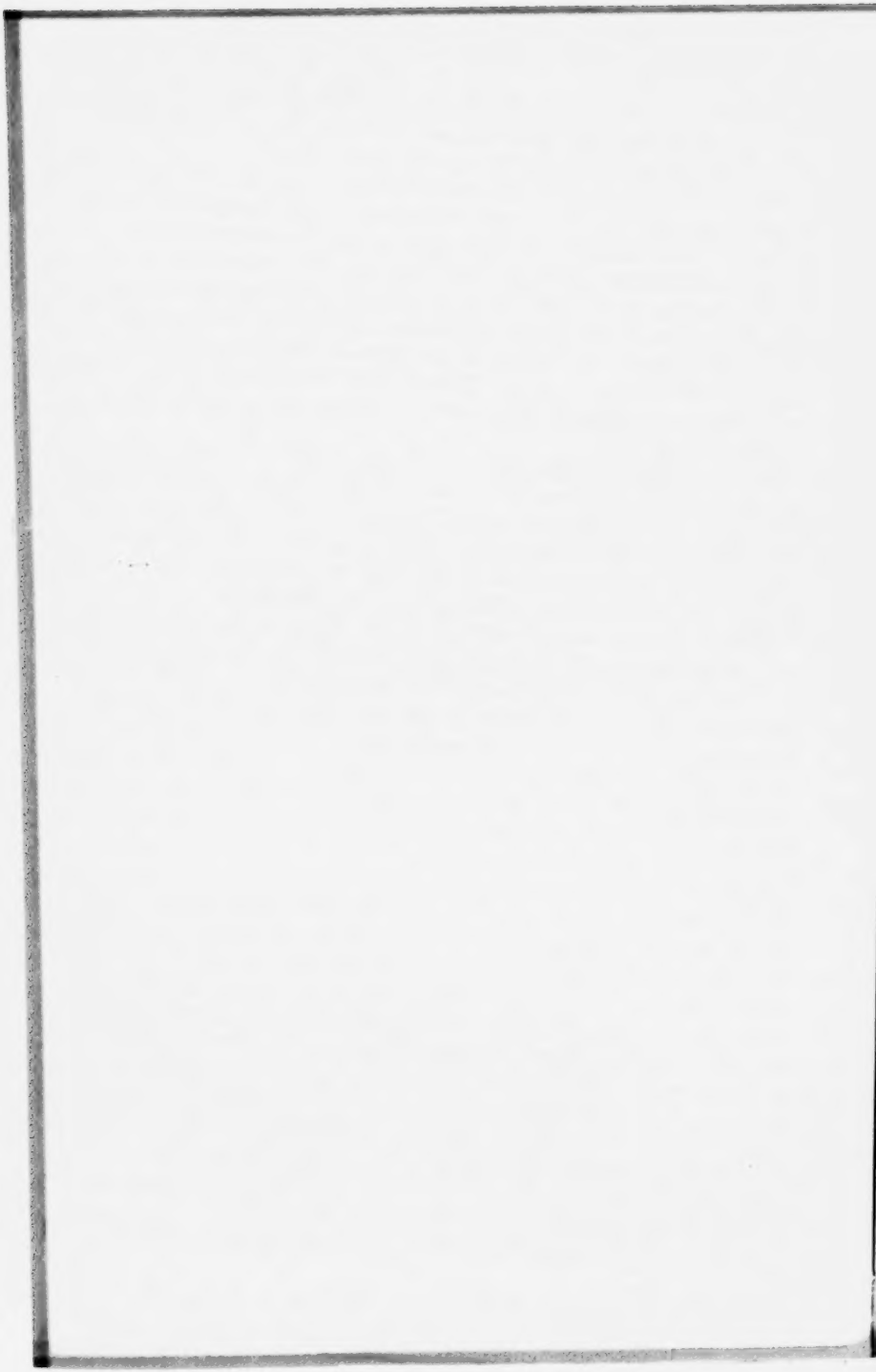
that the previous owner had been paying him $200 a month and it would be to his advantage if he continued the payments. Gemeinhardt testified that he told defendant that $200 was too much money, and after some negotiation defendant agreed to accept $100 a month. Gemeinhardt told him that he would have to discuss the matter with his partner and would get back to the defendant. In early March 1963, Gemeinhardt again returned to defendant's home and paid him the first installment of $100. During the next 5 to 7 months, Gemeinhardt paid the defendant $100 per month. The payments were all made in defendant's home except on one occasion they were made in his office at the police department. Gemeinhardt testified that Tom DiPaolo was the manager of the motel from 1963 until 1965. In 1966 Clarence Bastan was hired as the new manager.

Thomas DiPaolo testified that in February 1963, he became the manager of the Hollywood Motel in Alsip, Illinois. DiPaolo testified in May 1963, he went to defendant's home and gave defendant $50 upon orders of his employer, Mr. Gemeinhardt. DiPaolo testified that for the next 15 months while he was manager of the motel he would go to defendant's home on the first of every month and pay him $50 cash.

Clarence Bastan testified that on April 7, 1966, he became the manager of the Hollywood Motel in Alsip, Illinois. Shortly after assuming his duties on May 3, 1966, he met with the defendant in his office at the Alsip Police Station. At that time he gave the defendant $50. Each month thereafter he would meet with the defendant at defendant's home and pay him $50 cash. The payments were made to the defendant during the remainder of 1966, all of 1967 and until May of 1968. Bastan testified that in April or May 1968 business was down and he paid the defendant only $40 per month. Payments of $40 per month were made during the remainder of 1968. Bastan testified that in August 1968 he became the lessee of the Hollywood Motel. In December of 1968 or January of 1969, Bastan stopped making payments to the defendant. Bastan testified that all of the payments to defendant were entered on the daily sheets of the motel which were kept in the ordinary course of business. Bastan testified that 3 months after he stopped making the payments to the defendant, an Alsip squad car would be sitting on the north side of the driveway of the motel for an hour to and hour and a half at a time. The car would go away and would then return a short time later. Bastan called the mayor of Alsip to complain about the squad cars. The mayor told him that he would contact the chief of police. Bastan testified that when he called the mayor back the mayor stated that the police chief had informed him that Bastan had girls working at the motel.

Lawrence J. Kowalczyk testified that he is the owner of the Key Motel



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in Alsip, Illinois. He first purchased the motel in 1960. The manager of the motel is Robert Dahms. Kowalczyk testified that in spring of 1963 he received a summons from the village of Alsip. The charges were dismissed by a justice of the peace who suggested that Kowalczyk stop by the police chief's office. Kowalczyk testified that he went into the defendant's office. At that time defendant told him, "We better take care of the boys." Kowalczyk testified that he asked if $50 would be sufficient and defendant stated that it would. Kowalczyk then gave the defendant $50.

Robert Dahms, the manager of the Key Motel in Alsip, Illinois, testified that he first became the manager of the Key Motel in Alsip, Illinois, in April 1963. Approximately a month after he began his employment he met the defendant in the parking lot of the Key Motel. At that time defendant stated that the motel would be O.K. if he were taken care of. Dahms gave defendant $50. The transaction was recorded on the daily sheets of the Key Motel. In December 1963, Dahms met with defendant at defendant's home and again gave 10 envelopes with $10 apiece in each envelope. Each envelope had the name of one of the police officers of the village written on it. Dahms testified that the police officers never received the envelopes with their names on it. Dahms testified that from 1964 until 1970 the Key Motel paid defendant $300 a year. Each payment occurred at defendant's home and was registered on the daily sheets of the motel. Dahms testified that prior to making the payments to the defendant a squad car would be parked across from the motel with radar equipment. After making the agreement with the defendant no other squad cars were parked across the street from the motel.

The daily sheets of the Key Motel and Hollywood Motel were admitted into evidence. They substantiated the testimony of the owners and managers of the motels.

It was stipulated that between 1960 and 1970 the defendant, Stanley Thoms, was the chief of police of the Alsip Police Department, Alsip, Illinois, and that the indictment was returned within 1 year after the responsible parties were notified of the alleged violations.

Stanley Thoms, defendant, testified that from 1960 to 1971 he was the chief of police for the village of Alsip. Defendant testified that prior to the trial he had never met Mr. Kowalczyk. Defendant denied that he ever received any money from Kowalczyk or Gemeinhardt or DiPaolo. Defendant testified that in 1965 Dahms came into the police station and asked him to be made a member of the auxiliary police force. Defendant stated that Dahms' age was against him and he was not capable of going through a strenuous training program. During the next 4 years Dahms approached him on 10 more occasions about being placed on the auxiliary

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police force. Defendant testified that Dahms would become angry every time he was turned down. On July 15, 1971, as defendant was walking out of a Police and Fire Board meeting he passed by Dahms who stated that he had never given defendant a dime and wanted him to know that he would never testify against him. Dahms stated that he had to lie to cover up his own shortages. Defendant testified that Dahms again made similar statements on July 17, 1971, and March 14, 1972. Defendant denied that Dahms ever paid him any money.

Defendant testified that the Thursday prior to trial he met Bastan at the Gas City Gas Station in Calumet Park, Illinois. At that time Bastan told him that he was sorry, that he didn't think that the matter would go his far. Bastan stated that he only wanted to get defendant fired.

Raymond L. Termunde testified that from 1961 until 1972 he was mayor of the village of Alsip. Termunde testified that on March 14, 1972, he and the defendant were having lunch at the Pink Cloud Motel and Restaurant in Alsip, Illinois. As they began to exit the restaurant they met Dahms. At that time defendant asked Dahms why he had testified against him. Dahms replied that he never gave "Stan" a dime and that he had done it to cover up. Termunde testified that on several occasions Dahms had approached him about getting on as an auxiliary police officer. Termunde testified that defendant's reputation in the community for honesty and integrity was good.

It was stipulated that if Mrs. Joyce Arnold, a schoolteacher in Lemont, Illinois, and John Alsterda were called to testify they would testify that defendant's reputation in the community for honesty and integrity was good.

OPINION

Defendant's only contention on appeal is that the evidence did not establish his guilt beyond a reasonable doubt. Defendant argues that the evidence failed to establish that he had any criminal purpose or intent, that he was acting in his official capacity, that the remuneration was accepted knowingly, or that he accepted money for the purpose of causing the village of Alsip police vehicles to either be present or not present outside the motels involved.

Defendant was convicted of bribery and official misconduct. Section 33—1(d), (e), of the Criminal Code (Ill. Rev. Stat. 1969, ch. 38, pars. 33—1(d), (e)), under which defendant was indicted, defines bribery as:

> "A person commits bribery when:
>
> • • •
>
> (d) He receives, retains or agrees to accept any property or personal advantage which he is not authorized by law to accept

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knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer, public employee or juror; or

(e) He solicits any property or personal advantage which he is not authorized by law to accept pursuant to an understanding that he shall influence the performance of any act related to the employment or function of any public officer, public employee or juror."

Section 33–3(d) of the Criminal Code (Ill. Rev. Stat. 1969, ch. 38, par. 33—3(d)), under which defendant was also indicted, defines official misconduct as:

"A public officer or employee commits misconduct when, in his official capacity, he commits any of the following acts:

• • •

(d) Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law."

Defendant in seeking a reversal relies upon *People v. Jordan*, 15 Ill. App.3d 672, 304 N.E.2d 713. In *Jordan*, this court reversed where a Chicago police officer had been convicted of bribery and official misconduct. The evidence adduced at trial demonstrated that an ambulance responded to a call for help. Upon arriving at the scene, the defendant, a Chicago police officer, was present with his partner. The defendant accepted a $10 bill from the ambulance driver, and the ambulance proceeded on its way. This court held that to sustain a conviction under the bribery statute or the official misconduct statute, the State must show more than the acceptance of a fee or reward by an employee. Since the evidence failed to establish that defendant was acting in his official capacity or that he had accepted the remuneration knowingly, or that he had accepted anything for the performance of a specified act, the conviction was reversed.

• 1 In the case at bar, the defendant was the chief of police of the village of Alsip from 1960 to 1970. The testimony of the State's witnesses established that in the case of both motels the defendant actively solicited the money using his position as chief of police. Louis Gemeinhardt, the owner of the Hollywood Motel, testified that several weeks after purchasing the motel in February of 1963, he met the defendant at defendant's home. At that time defendant told him what a hazardous business running a motel was and offered to use his influence as police chief to take care of the property and to see that he did not run into any kind of problems. Thereafter, for a period of 6 years, the defendant accepted monthly payments from Gemeinhardt and the managers of the motel.

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Lawrence Kowalczyk, the owner of the Key Motel, testified that shortly after purchasing that motel he received a summons from the village of Alsip. After his case was dismissed the justice of the peace suggested that he stop at the police chief's office. Kowalczyk testified that he met the defendant, who was the chief of police, in his office. At that time defendant told him, "We better take care of the boys." Thereafter, and for a period of 6 years, defendant accepted payments from Kowalczyk and the motel managers.

This testimony clearly established that defendant was using his office as chief of police of the village of Alsip in order to extract money from both motels. Defendant in both occasions actively solicited the money and accepted payments over a period of 6 years. Defendant argues that the testimony regarding the original solicitations in 1963 should not be considered on appeal since the statute of limitations has run as to those offenses. However, this evidence was admissible as showing a continuing course of conduct by the defendant. Defendant solicited and accepted the payments over a long period of time and there can be no question that he received the funds knowingly. Both motels had problems with squad cars parking near the motels when funds were not being paid to the defendant. However, as long as payments were being made to the defendant the squad cars disappeared. It is obvious from the evidence that the motel owners and managers did not want squad cars parked in front of their premises. After a complete review of all the evidence adduced at trial, we conclude that the defendant knowingly solicited and accepted funds which were unauthorized by law, using his office as chief of police with the intent to influence the performance of an act in his official capacity.

While defendant denied that he received money from either of the motels, the credibility of witnesses and the weight to be given to their testimony are matters for the trier of fact to determine. (*People v. Clark*, 52 Ill.2d 374, 288 N.E.2d 363.) The evidence adduced at trial was sufficient to establish defendant's guilt on both charges beyond a reasonable doubt.

The judgment is affirmed.

Affirmed.

DRUCKER and LORENZ, JJ., concur.